



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 99 247 51567 Office: California Service Center

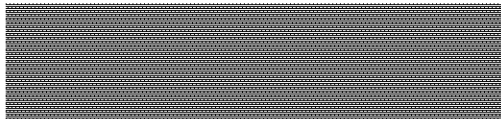
Date: JUN 20 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER:



copy

Identify...
prevent clearly...
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a travel agency. It seeks classification of the beneficiary as a trainee for a period of one year. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation.

On appeal, counsel states that the petitioner's training program has a fixed schedule and clear objective. Counsel also states that the Service imposed additional requirements not promulgated in the regulations.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

(ii) *Evidence required for petition involving alien trainee--(A) Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The beneficiary is currently in H-3 status until November 30, 2000. She is presently receiving training with Caravan Serai, Inc., and wants to change to the petitioner's training program for the same time period. The petitioner's in-house training program provides its trainees with expertise in all areas of the U. S. travel and tour agency. It consists of live lectures, independent research and on-site observation with the primary focus of the program being U.S. operations systems, tour packages and travel networking development. The purpose and goal of the program is to prepare the beneficiary for a managerial position with the petitioner's affiliate company in Japan.

The petitioner's training program deals in generalities with no fixed schedule, or means of evaluation. The training program is explained in general terms and does not include a detailed description of the coursework, the number of hours that will be spent in each course, who will be providing the supervision and training and the means by which the instructors will be evaluating the trainee.

Counsel states on appeal that there is no requirement that a training program be academic and the names of the instructors be provided in the training program. However, the regulations state that each petition for a trainee must include a statement which describes the type of training and supervision to be given, the structure of the training program and the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training. Further, a training program cannot be approved that does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified. See 8 C.F.R. 214.2(h)(7).

Beyond the decision of the director, this case cannot be approved for other reasons. The petitioner has not established that the physical premises are suitable for training. The petitioner has not stated the physical layout of the office in order for the Service to determine its suitability for training purposes.

The record indicates that the beneficiary completed ESL courses in Colorado in 1993, and received an Associate of Applied Science degree in travel, recreation and hospitality management from Mesa State college in 1997. While attending classes, she took a travel clerk internship at Wahweap Lodge and after graduation, she did her practical training with Yahiro Tour Service in Las Vegas, Nevada as a tour conductor. It appears the beneficiary already has substantial training and expertise in the proposed field of training. The petitioner has not stated what additional training it would be providing that the beneficiary has not already received.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.